

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Echostar Satellite LLC, et al.,

NO. C 07-06124 JW

Plaintiffs,

v.

**ORDER PERMITTING SERVICE OF
PROCESS TO BE MADE BY DELIVERY
TO THE SECRETARY OF STATE**

Freotech, Inc.,

Defendant.

Presently before the Court is Plaintiffs' Motion for Issuance of Order that Service of Process May Be Made Upon South Coast Satellite, Inc. by Delivery to the Secretary of State. (hereafter, "Motion," Docket Item No. 133.) Plaintiffs represent that, despite significant effort, they have been unable to serve a Rule 45 subpoena on South Coast Satellite, Inc. ("South Coast"), which is a California Corporation and one of Defendant's authorized dealers. (Docket Item No. 133-2, Ex. 1.) According to Plaintiffs, they have made twelve unsuccessful attempts to effect service of process on South Coast's registered agent, Scott Wozniak. (Motion at 2-3 and evidence cited therein.)

Federal Rule of Civil Procedure 45 provides that "[s]erving a subpoena requires delivering a copy to the named person." California Corporations Code § 1702(a) provides:

if the agent designated [for service of process] cannot with reasonable diligence be found at the address designated for personally delivering the process, or if no agent has been designated, and it is shown by affidavit to the satisfaction of the court that process against a domestic corporation cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the corporation in the manner provided in subdivision (a), (b) or (c) of Section 416.10 or subdivision (a) of Section 416.20 of the Code of Civil Procedure, the court may make an order that the service be made upon the

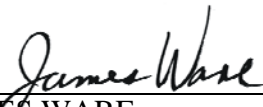
corporation by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

Cal. Corporations Code § 1702(a).

Based on Plaintiffs' representations, pursuant to California Corporations Code § 1702(a), the Court GRANTS Plaintiffs' Motion to serve a Rule 45 subpoena upon the Secretary of State.

Accordingly, Plaintiffs may effect service of process upon South Coast Satellite, Inc. by delivery to the California Secretary of State. Plaintiffs shall file the appropriate certificate of service on or before **June 5, 2009**.

Dated: May 22, 2009



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Andrew P. Bridges abridges@winston.com
Chad M. Hagan chagan@twvlaw.com
Chad Michael Hagan chagan@twvlaw.com
David M. Noll dnoll@twvlaw.com
Frank Michael Timothy tfrank@twvlaw.com
Fred von Lohmann fred@eff.org
Jennifer A. Golinveaux jgolinveaux@winston.com
Matthew Alex Scherb mscherb@winston.com
Richard R. Olsen rolsen@twvlaw.com
Roy K. McDonald roy.mcdonald@dlapiper.com
Stephen Andrew Chiari stephen.chiari@dlapiper.com
Stephen Matthew Ferguson sferguson@twvlaw.com
Timothy M. Frank tfrank@twvlaw.com

Dated: May 22, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy